

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SAYIDEN HUSSEIN MOHAMED,

Plaintiff,

v.

DOCTOR KAMI HARLESS,

Defendant.

Case No. C16-1542-RSL-JPD

REPORT AND RECOMMENDATION

On October 3, 2016, plaintiff submitted to this Court for filing a civil rights complaint under 42 U.S.C. § 1983 together with an application to proceed with this action *in forma pauperis*. (See Dkt. 1.) Plaintiff alleged in his complaint that Kami Harless, a doctor at the King County Jail, sexually assaulted him during a medical examination in August 2016. Plaintiff asserted that the doctor's conduct violated his rights under the Eighth Amendment, and he requested injunctive relief and \$1 million in damages.

On October 21, 2016, the Court issued an Order granting plaintiff's application to proceed *in forma pauperis* and his complaint was filed. (Dkts. 4 and 5.) On the same date, this Court issued an Order directing plaintiff to show cause why this action should not be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be

1 granted because plaintiff's claim against Dr. Harless did not implicate federal constitutional  
2 concerns. (Dkt. 6.)

3 The Court explained that because plaintiff was a pretrial detainee at times relevant to his  
4 complaint, his claim arose under the Fourteenth Amendment which requires that a pretrial  
5 detainee not be punished prior to an adjudication of guilt. (*See id.* at 2, citing *Bell v. Wolfish*,  
6 441 U.S. 520, 535-36 (1971).) The Court went on to explain that plaintiff's allegations did not  
7 implicate his right to be free from punishment because the facts set forth in his complaint  
8 described merely a medical examination and not a sexual assault. (*Id.*) Plaintiff was granted  
9 thirty days within which to file a response to the Order to Show Cause, and he was advised that  
10 his failure to do so would result in a recommendation that this action be dismissed. (*Id.* at 3.) To  
11 date, plaintiff has filed no response to that Order.

12 When a complaint is frivolous, malicious, fails to state a claim upon which relief may be  
13 granted, or seeks monetary relief against a defendant who is immune from such relief, the Court  
14 may dismiss an *in forma pauperis* complaint before service of process under 28 U.S.C.  
15 § 1915(e)(2)(B). Because plaintiff failed to allege in his complaint any claim upon which relief  
16 may be granted in this civil rights action, and because he failed to respond in any fashion to the  
17 Order to Show Cause, this Court recommends that plaintiff's complaint and this action be  
18 dismissed, with prejudice, pursuant to § 1915(e)(2)(B)(ii). A proposed order accompanies this  
19 Report and Recommendation.

20 Objections to this Report and Recommendation, if any, should be filed with the Clerk and  
21 served upon all parties to this suit by no later than **December 27, 2016**. Failure to file objections  
22 within the specified time may affect your right to appeal. Objections should be noted for  
23 consideration on the District Judge's motion calendar for the third Friday after they are filed.

1 Responses to objections may be filed within **fourteen (14)** days after service of objections. If no  
2 timely objections are filed, the matter will be ready for consideration by the District Judge on  
3 **December 30, 2016.**

4 This Report and Recommendation is not an appealable order. Thus, a notice of appeal  
5 seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the  
6 assigned District Judge acts on this Report and Recommendation.

7 DATED this 6th day of December, 2016.

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9 JAMES P. DONOHUE  
10 Chief United States Magistrate Judge  
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